* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ CRL MISC (MAIN) NO 490 OF 2005

Reserved On : 6th July, 2007
Date of Decision : 16th July, 2007

DEVINDER SINGH MAKAN & OTHERS ..... Petitioner
Through Mr. Tiger Singh & Mr. Manmeet Singh, Advocates

versus

CENTRAL BUREAU OF INVESTIGATION
& ANOTHER ..... Respondent
Through Nemo

CORAM:
Mr. Justice S. Ravindra Bhat

1. Whether reporters of local papers may be allowed to see the judgment.? Yes

2. To be referred to the Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

Mr. Justice S. Ravindra Bhat:

1. The petitioners seek quashing of criminal proceedigs under Section 482, Criminal Procedure Code.

2. The facts of the case, briefly are that according to the prosecution, M/s. Makan Agro Oils Ltd., (hereafter "MAOL") was an incorporated company, of which the Petitioner was a director and other accused, were his relatives. On complaints, investigations were carried out, and a charge sheet was filed, alleging

commission of offences under section 120-B r/w 420 IPC and 13(2) r/w 13 (1) (d) of the Prevention of Corruption Act 1988.

3. According to the prosecution, the petitioner opened a current account No.137 in State Bank of Travancore, Karol Bagh Branch, New Delhi in the name of his company M/s. Makan Agro Oils Ltd., New Delhi on 06.04.1994. He sent a letter that day, alongwith Board resolution to the bank that he and P.K. Maheswari were the authorised signatories to operate the account. Sh. P.K. Maheswari in the capacity of Executive Director (Finance) on behalf of the company submitted an application 13.01.1995 addressed to Chief Manager, SBI, Karol Bagh, New Delhi for sanction of Adhoc Packing Credit Limit of Rs.11.50 crores and post shipment credit of Rs.11.50 crores alongwith photocopies of fax dated 04.01.1995 of M/s. Mactel International Company Ltd., Taiwan and fax dated 05.01.1995 of M/s. Al-Thelal Trading Establishment, Jordan, for export of 20000 MT and 15000 MTs of Soyabean products. Sh. Nayam Pillai Sudhir as Chief Manager (Branch Manager) and Sh. T.K. Narayana Pillai as Chief Manager (&I), SBT, Karol Bagh, New Delhi dishonestly adhoc packing Credit Limit of Rs.11.50 cores to M/s. Makan Agro Oils Ltd., New Delhi (MAOL) without adhering to the stipulated terms and conditions of the sanction and disbursed the amount of Rs.11.50 crores of the said limit in flagrant violations of the established norms, rules and practices prevailing in this regard.

4. The prosecution alleged that investigation disclosed that Bank officials committed basic and serious acts of omissions and commissions in recommending for sanction of Ad-hoc Packing Credit facility to the extent of Rs.11.50 crores in favour of M/s. MAOL Ltd., New Delhi by proposal dated 15.01.1995, without obtaining the verification Report of the fax messages dated 04.01.1995 and 05.01.1995 of foreign buyers. M/s. Mactel International Company Ltd., Taiwan and M/s. Al-Thelal Trading Establishment Jordan, respectively. They were not firm export orders and the same were not confirmed by either the supplier or the buyers. It was alleged that the co-accused bank officers did not ascertain the past track record of the party with regard to the export activities, and did not obtain any report on the status of the Foreign Banks through which the LCs were to be opened and they accepted the false statements of M/s. MAOL without any verification and supporting documents. Investigation also disclosed that Sh. Narayan Pillai Chief Manager (Branch ManagerA) and T.K.N. Pillai as a Incharge (C&I section) of the branch while recommending sanction of adhoc Packing Creidt facility, accepted the statement of M/s. MAOL that about 25% of the ordered quantity can be exported out of its own production and the balance quantity was proposed to be procured from other manufacturing units, with whom tie up arrangements had reportedly been made by M/s. MAOL. It was found that such a statement was false; no such such arrangements of M/s. MAOL with any Company had existed.

The amount of APCL was released without getting LCS opened by the foreign buyers.

5. The petitioner requested State Bank of Tranvancore Karol Bagh Branch, New Delhi on 23.02.1995 to release the said Ad-hoc Packing Credit Limit (APCL) of Rs. 11.50 crores to procure the materials for completing export in time. The officers of the bank co-accused released the 1st APCL without complying with the terms and conditions of the sanction and also without opening a separate operative account to monitor the proper end use of the funds of adhoc PCL and amount of 1st adhoc PCL was disbursed without requirement relating to the specific exports. Adhoc PCL was released without complying with the following terms and conditions.

(1) L/C for export of Mactal International Co., Ltd., Taipai Taiwan to be obtained before releasing the limit;

(2) Lodging of firm export orders by M/s. MAOL before releasing the limit;;

(3) L/C for export of M/s. Al-Thelal Trading Estt. Jordan to be got opened before releasing the limit;

(4) Built up for current assets to be ensured before releasing the limit

6. Instead of complying with terms of sanction, the petitioners and co-accused,

allegedly in connivance with N.P. Sudhir and T.K.N Pillai withdrew an amount of Rs.2.5 crores which was transferred to the account of M/s. Kothari Bros. through a cheque. According to the chargesheet, the account in of M/s. Kothari Bros. was opened in the Bank of Madura, Chandni Chowk, Delhi on 08.02.1995. The introducer was Sh. D.S. Makan, the first petitioner. The proprietor of the firm as per bank record is Sh. Manjit Singh R/o C-91, Narain Vihar, New Delhi. The address of the firm is C-41, Gulmohar park, New Delhi which is the residential flat of Sh. Devender Singh Makan. The firm M/s. Kothari Bros. was allegedly not found to be in existence at the given address. There was no previous transaction between M/s. MAOL and M/s. Kothari Bros. As per bank records the business of M/s. Kothari Bros. had been shown as grain merchant which establishes the diversion of funds from the account of M/s. MAOL to Sh. Manjit Singh (Prop. Of Kothari Bros.).

7. The charge sheet alleged that the officers of the bank and co-accused, also allowed the release of a second APCL by crediting the amount in Cash Credit Account No.137. No separate operative account was opened to monitor the proper end use of the funds of adhoc PCL. The amount of adhoc APCL was disbursed for the purposes other than for which it was allowed. It further alleged that when SBT vide letter dated 23.04.1995 asked M/s. MAOL to submit export bills for naegotiation M/s. MAOL informed through a letter dated 15.05.95 that the goods

were ready for export to Taiwan and Jordan and the same were lying with the clearing agent M/s. B. Devchand and Sons at Jam Nagar Port. However, no export bill for negotiation (realisation) were submitted by M/s. MAOL. Shri N.P. Sudhir and T.K.N. Pillai did not carry out the inspection of the goods reportedly lying for export at Jam Nagar. The headquarters of State Bank of Travancore instructed its Karol Bagh Branch to discount the export bills drawn under another LC of Rs.20 crores and other sanction of APCL would be only considered when out-standings of M/s. MAOL were fully recovered. Accordingly a sum of Rs.11.20 crores was recovered from other bills. However, a sum of Rs.45 lacs (Rs.30 lacs principal and Rs.15 lacs interest) remained outstanding. In order to make M/s. MAOL eligible for second APACL Sh. M. Sudhir in collusion with Sh. T.N. Narayana Pillai fraudulently liquidated the outstanding of Rs.45 lacs of 1st adhoc PCL on 13.08.1995 by transferring it to the Cash Credit Account of M/s. MAOL and thereby violated the instructions of SBT, HH. In this manner M/s. MAOL became eligibile to seek fresh and ahoc PCL. It was disclosed to the bank authorities that Rs.11.50 crores had been fully liquidated on 13.08.1995 by negotiating export bills, while in fact the amount was debited by transferring the debit balance to Cash Credit Amount. Based on this information, the head office of the bank sanctioned 2nd APCL, of Rs.11.50 crores to M/s. MAOL in August, 1995.

8. The second APCL was treated as fresh sanction as the first APCL

outstanding was recovered from other export bills of M/s. MAOL. That company, through another director, Smt. Anjali Makan applied for a fresh APCL of Rs.15 crore to execute another export order of Rs.2655.90 lakhs of M/s. Tycoon International Ltd., Moscow. The headquarters of the bank sent the proposal for sanction of fresh APCL of Rs.11.50 crores only instead of Rs.15 crores mentioning that the company M/s. MAOL had an export order of M/s. Tycoon International and a Letter of credit would be opened. It was also mentioned that M/s. MAOL is a defaulter in respect of the loan obtained from Vijaya Bank, which had filed a civil suit for recovery. In spite of these known facts, the Managing Director of the bank sanctioned APCL of Rs.11.50 crores not as "fresh" one but as an extension of the earlier APCL. After receiving approval, Shri. Nayam Pillai Sudhir and T.K. Narayna Pillai, after the receipt of extension of APCL, allowed to release various amounts totalling Rs.9,83,89,890/- without obtaining any Letter of Credit and without any written request from the Directors of M/s. MAOL. The amounts of 2nd APCL were disbursed for the purposes other than the purposes for which the same were granted. The amounts allowed to be released are as under :

1. Rs.4.50 crores to the Commissioner of Customs, Mumbai.

2. Rs.1.70 cores to Federation Bank, Nehru Place, New Delhi.

3. Rs.23 lacs to ICICI, New Delhi

4. Rs.3,59,023/- to Rajashtan State Industrial Development Corporation.

9. According to the charge sheet, Sh. Manjit Singh, Sh. Devender Singh Makan and Smt. Anjali Makan did not join the investigation. Non-bailable warrants in respect of Shri. Manjit Singh, Sh. Devender Singh Makan and Smt. Anjali Makan were issued by the Special Judge, CBI, Delhi on 23.03.2000. An intimation was sent by CBI, on 29.05.2000 to Interpol (Notice Section) Paris France for issue of Red Corner Notice against the accused persons. On these allegations, the charge sheet sought to arrain the petitioners and other accused of offences punishable U/s 120-B r/w 420 IPC and 13(2) r/w 13 (1) (d) of PC Act 1988.

10. Mr. Tiger Singh, learned counsel contended that the allegations in the charge sheet even if proved could not lead to inference of commission of offences. He submitted that the first ad-hoc packing credit was admittedly liquidated in the books of the bank; there was no question of any liability of the petitioner accused. It was contended that the accused could not be said to have induced the bank or lead to financial losses, to warrant the charge under Seciton 420.

11. Learned counsel submitted that the bank had filed civil proceedings and sued the company as well as the petitioners for its alleged dues. Since the petitioners are NRIs possessing Green cards and have been residing in the United

States for long, the proceedings were decided *ex-parte.* Though the decree was made in 2003, and the decretal amount was about Rs. 18 crores, the petitioners, fairly and in order to settle all disputes, paid Rs. 9.5 crores in foreign exchange, to the bank duly routing it through the Reserve Bank of India. Learned counsel submitted that the charge sheet was filed as long back as in 1995; the proceedings have made no headway since then. According to him, the bank will not support the prosecution since it has stated on oath that all disputes stand settled.

12. Learned counsel for the petitioner relied upon the decision reported as *C.B.I. -vs- Duncans Agro* 1996 (5) SCC 591 and the decision in *Rachna Kapoor -vs- State* 2005 (35) AIC 424 (Del) for the submission that in such cases, interests of justice indicate that the criminal proceedings should be quashed. He also relied on the judgments reported as *M. Kurien -vs- State* ILR 1999 (2) Del 514; *Ravi Kumar -vs- State* (124) DLT 2005 1 and *K. Ramakrishna & Ors -vs- State of Bihar* 2000 (8) SCC 547.

13. There was no appearance on behalf of the CBI. I have considered the materials on record and the charge sheet.

14. The factual matrix is that the petitioners are alleged to have induced the State Bank of Travancore, in two separate transactions, to sanction credit limits for huge amounts. The amounts were required by the petitioners' company, MAOL,

for certain purposes. The limts were sanction without following proper procedure, which would have revealed that the purposes for which it was applied, that is to finance transactions, were allegedly bogus; firms such as M/s. Kothari Bros was allegedly not found to be in existence at the given address; Shri Manjit Singh an accused, and director of MAOL, was subsequent discovered to be shown as its proprietor. It was also alleged that the money was disbursed without following formalities; no LC had been opened in respect of the transactions. The charge sheet also alleged that in a transaction, credit facilities had been obtained, on the representation that export orders had been placed by M/s Tycoon International of Moscow, which was again a dubious concern, floated by the first petitioner. The bank's exposure was over Rs. 11.50 crores; the amounts obtained by the petitioners were allegedly not used for the purposes originally represented by them; instead, they were used to clear outstandings payable to the Commissioner of Customs, Mumbai, Federation Bank, Nehru Place, New Delhi, ICICI, New Delhi and the Rajashtan State Industrial Development Corporation.

15. The principal ground seeking quashing is that the civil disputes between the State Bank of Travancore and the petitioners have been settled fully; therefore, no purpose would be served in allowing the criminal proceedings to continue. The submission that the allegations do not amount to the offence of cheating has also been made.

16. The limits of jurisdiction of this court under Section 482 are well known. In *State of Haryana v. Bhajan Lal* 1992 Supp (1) SCC 335 the Supreme Court, while commenting on the plenitude of that the power, cautioned that it should be exercised sparingly and in the rarest cases. The illustrative categories indicated by the Court, in that decision are:

"(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the F.I.R. or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a Police Officer without an order of a Magistrate as contemplated under S. 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or here the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal

grudge.

17. The Court therefore, has to be circumspect and has to see that its decision in exercise of this power is based on sound principles. Inherent powers should not be exercised to stifle a legitimate prosecution. The High Court ordinarily is expected to refrain from giving a *prima facie* decision in cases. Althouth there can be no thumb rule as regards cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceedings, the power can be used at any stage. (Re *The Janata Dal etc. v. H.S. Chowdhary and others, etc*. AIR 1993 SC 892, *Dr. Raghubir Saran v. State of Bihar and another* AIR 1964 SC 1). Nevertheless, the Court cannot meticulously analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premise, arrive at a conclusion that the proceedings are to be quashed.

18. I am unpersuaded that this case calls for recourse to inherent powers. The plea of settlement of civil claims of the bank by the petitioners being a ground for quashing is, to my mind an over-simplification of the questions which arise in the case. The charge sheet was filed by CBI after investigation; it records various acts of omissions and commissions by the petitioners and other accused, which *prima facie* amount to allegations of commission of offences. Read as a whole, the charge sheet cannot be said to absolve the petittioners of their alleged role; rather, it positively alleges their involvement. That the charge sheet was filed in 1995, and

no headway has been made in the criminal proceeding, cannot at least in this case be a ground to quash them. The charge sheet itself reveals that the petitioners and other did not participate in the investigations. They appear to have approached the bank only in 2003, and agreed to pay off the principal amount, despite suffering a decree for about Rs. 18 crores.

19. Wide though the powers of the High Court, the amplitude of its jurisdiction can always be used only to secure the ends of justice, not to thwart a legitimate prosecution. In doing so, the court would be acting contrary to Seciton 482; it would indeed be subverting the course of justice. In the facts and circumstances of this case, I am of the view that the court should desist from using its powers under that provision.

20. In view of the above, the petition has to fail; it is accordingly dismissed, without order as to costs.

16th July, 2007 (S. RAVINDRA BHAT)

JUDGE